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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH PATRICK LAYBOURNE,

Defendant and Appellant.

E071298

(Super.Ct.No. FWV1503178)

OPINION

APPEAL from the Superior Court of San Bernardino County. Charles J. Umeda,
Judge. Affirmed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On August 25, 2015, a felony complaint charged defendant and appellant Joseph Patrick Laybourne with child abuse under Penal Code¹ section 273a, subdivision (a), plus an enhancement for personal infliction of great bodily injury under section 12022.7, subdivision (a) (count 1); torture under section 206 (count 2); and lewd act upon a child under section 288, subdivision (a) (counts 3 and 4). On September 15, 2015, the first amended felony complaint was filed; it amended count 1 to allege assault on a child becoming comatose under section 273ab, subdivision (b).

At the preliminary hearing on December 30, 2015, the trial court dismissed count 2 (torture) for insufficient evidence. On January 4, 2016, an information was filed, which continued to allege the torture count. On April 8, 2016, defendant moved to dismiss the torture count; the court indicated it had reviewed the preliminary hearing transcript and denied the motion.

On February 9, 2018, pursuant to a plea agreement, the People amended the information to allege two additional counts: (1) child endangerment resulting in great bodily injury to a child under five years old under sections 273a, subdivision (a), and 12022.7, subdivision (d) (count 5); and (2) assault by means of force likely to cause great bodily injury resulting in great bodily injury to a child under five years old under sections 245, subdivision (a)(4), and 12022.7, subdivision (d) (count 6). Thereafter, defendant

¹ All statutory references are to the Penal Code unless otherwise specified.

pled no contest to counts 5 and 6, and admitted the enhancements. In exchange, the People agreed to dismiss the remaining charges.

On August 31, 2019, the trial court sentenced defendant to 18 years in state prison. As to count 5, the court imposed the upper term of six years for the conviction, plus the upper term of six years for the enhancement. As to count 5, the court imposed one year for the conviction (one-third the midterm), plus the midterm of five years for the enhancement. The court also awarded defendant 1,179 days of presentence custody credit which consisted of 1,026 actual days plus 153 days of good conduct credit.

On September 13, 2018, defendant filed a notice of appeal in pro. per.; on September 26, 2018, appellate counsel filed an amended notice of appeal on behalf of defendant.

B. FACTUAL HISTORY

Ten-month-old Jane Doe (Doe) lived in a home with her mother (mother), mother's boyfriend (defendant), her great-grandmother, her four-year-old brother, a 16-year-old cousin, and a non-related adult female roommate.

On August 25, 2015, at approximately 6:40 p.m., City of Rialto police officers were dispatched to the home for medical aid based on suspicious circumstances. Upon arriving at the residence, Officers Mendez and Blue interviewed mother. Earlier that day, at approximately 3 p.m., mother had been doing chores around the house while Doe was napping. After finishing the laundry, mother also took a nap. She awoke when she heard a "thud" at approximately 5:30 p.m. Mother walked into Doe's bedroom and saw defendant holding her. Defendant was frantic and told mother that Doe was having a

hard time breathing. Doe was limp, not moving, and moaned like she was in pain. There was blood around Doe's mouth. Mother saw what appeared to be bite marks on Doe's cheeks. She took Doe from defendant and called 911.

Officers Mendez and Blue interviewed defendant. Defendant stated that he had gone into Doe's bedroom while she was napping and saw that Doe was having a hard time breathing. Her head was slumped and her eyes were rolled back. Defendant splashed water on Doe's face. She responded to the water then became unresponsive again. Defendant held her for five to 10 minutes, then mother came in.

Officer Lopez interviewed great-grandmother. She told the officer defendant was "short tempered" with the children and that she had noticed small bruises over Doe's body after Doe had been in defendant's care. She also noticed Doe would cry and fuss when she was left with defendant. Great-grandmother had gone with mother to take Doe to a doctor appointment that morning and the doctor had described Doe as "healthy and alert." Doe's clothes were removed during the examination. Doe had old injuries such as healing marks on her face and some blisters that she had gotten from walking on hot cement a couple of days prior. She had no new injuries and there were no injuries to Doe's vagina or bottom.

Officer Lopez interviewed pediatrician Amy Young, the medical director for the Children's Assessment Center at Loma Linda Children's Hospital. Dr. Young treated Doe after she was transported to the hospital. Dr. Young reported "vaginal penetration to . . . Doe evidenced by hymen bruising, vagina bleeding." Doe additionally suffered anal fissures, bite marks on both cheeks and her left armpit, bruising throughout her body,

abdominal injuries, trauma inside her mouth, a lung contusion, and a brain injury. Doe was in a coma when she arrived.

Officers arrested defendant and he was interviewed at the police station after giving a *Miranda* waiver. Officer Blue interviewed defendant again. Defendant admitted he had not been honest during the first interview. Defendant had been carrying Doe up the stairs with one arm; Doe fell backwards and hit her head against the railing, the bannister and the wall. Doe looked fine, so he put her in her crib and went to get her a bottle. He gave her the bottle then left the room, but he heard her choking so he went back. She was choking on a small piece of plastic. He did not know where the plastic came from. He stuck his finger in her mouth to retrieve the plastic, but Doe bit his finger so hard that he bit her on the cheek to get her to release his finger and “in retaliation for her biting his finger.” Defendant then tried to get the piece of plastic out by compressing Doe’s stomach. Doe threw up and the plastic came out.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. On February 26, 2019, counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

MENETREZ
J.